

No. 48713-6-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

WALLACE PRUITT, III,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 15-1-01419-8
The Honorable Bryan Chushcoff, Judge

REPLY BRIEF OF APPELLANT

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I. ARGUMENT & AUTHORITIES

The State asks this Court to remand Wallace Pruitt's case to the trial court to correct the sentence so that his 72-month firearm enhancement will run consecutively to the 116 month base sentence imposed for Pruitt's unlawful possession of a firearm (UPFA) convictions. (Respondent's Brief at 36-37)

The State relies on the language of RCW 9.94A.533, which states: "If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement." The State's interpretation seems to be supported by our State Supreme Court's opinion in State v. Thomas, 150 Wn.2d 666, 80 P.3d 168 (2003).

However, if the State is correct, the remedy should be remand for a resentencing hearing. When the trial court imposes an erroneous sentence, remand for resentencing is necessary unless the record is clear that the trial court would have imposed the same sentence. See e.g. State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997) ("[w]hen the sentencing court incorrectly calculates the standard range ... remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same

sentence anyway;" State v. Drummer, 54 Wn. App. 751, 760, 775 P.2d 981 (1989) ("[w]hen an exceptional sentence is based on both proper and improper grounds, an appellate court must remand the case for resentencing unless it is satisfied that the trial court would have imposed the same sentence absent consideration of the improper grounds.).

In this case, it is not clear from the record that the trial court would have imposed 116 months on each UPFA count (the highest end of the standard range) if it understood that the firearm enhancement would be applied in this way, and that Pruitt could end up serving more than 120 months in total. When considering what sentence to impose, the trial court was operating under the assumption that Pruitt would be receiving credit for the 116 month UPFA sentences while he served the 72-month firearm enhancement:

I think they run concurrently. Because they run concurrently, when he has done 72 months there, he probably would have been just about done with the other two counts, period.

(10RP 918-19) And the trial court also specifically stated that "[t]hese will all be concurrent. Under no circumstances should his term exceed 120 months of confinement." (10RP 938) So the trial court

believed that Pruitt would be serving a maximum of 120-months, and did not believe that the length of the UPFA sentence would be particularly relevant.

Because the trial court's sentence potentially rested on a misunderstanding of the law, and because the record does not show that the court would have imposed the same sentence for the UPFA convictions in the absence of that mistake, any remedy should include remand for resentencing.

II. CONCLUSION

For the reasons argued in the Opening Brief of Appellant, Pruitt's assault and violation of a protective order convictions should be reversed. For the reasons argued above, if there is indeed an error in the sentencing in this case, then the remedy is remand for a new sentencing hearing.

DATED: February 13, 2017



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Wallace Pruitt, III

CERTIFICATE OF MAILING

I certify that on 02/13/2017, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Wallace Pruitt, DOC# 808874, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326.



STEPHANIE C. CUNNINGHAM, WSBA #26436

CUNNINGHAM LAW OFFICE

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